



Restaurant
& Catering

2018 Review of the Model WHS laws

R&CA Submission

April 2018

RESTAURANT & CATERING AUSTRALIA

Restaurant & Catering Australia (R&CA) is the national industry association representing the interests of over 45,000 restaurants, cafés and catering businesses across Australia. R&CA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector's operating environment.

R&CA is committed to ensuring the industry is recognised as one of excellence, professionalism, profitability and sustainability. This includes advocating the broader social and economic contribution of the sector to industry and government stakeholders, as well as highlighting the value of the restaurant experience to the public.



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INTRODUCTION

R&CA welcomes the opportunity to provide a submission to the 2018 Review of the model WHS laws. As the national industry association representing the interests of over 45,000 cafés, restaurants and catering companies throughout Australia, R&CA is well-placed to provide comment on the review of the WHS laws that apply (in some way) to all restaurants, café and catering businesses across the country. R&CA is committed to ensuring that the highest standards of work health and safety practices are upheld among the foodservices industry, including the café, restaurant and catering sector. To this end, R&CA supports the overarching objective as outlined in the Work Health & Safety Acts of reducing the incidence of workplace injury.

In reviewing the model laws, it is important to note that the hospitality industry is a low risk sector in terms of deaths and serious injuries at work. According to Safe Work Australia, the accommodation and food services industry accounted for less than 6 per cent of overall workplace claims (6,185 out of 104,770 in 2017).¹ Injuries are predominantly in the areas of manual handling which are addressed through proper staff induction and ongoing staff training. Of course, no work-related injuries are acceptable but the low risk nature of the sector should be considered in terms of the review. The model Act has no way to differentiate low risk small businesses from other sectors. We note that some of the previous state based OH&S Acts included exemptions for small businesses on some of the requirements – mainly of an administrative nature. We believe that there should be consideration of the reduced capacity of small businesses to respond to complex codes of practice and regulations where there is a demonstrated lowered risk. 92.1 per cent of the 45,000 businesses in this sector are classified as small businesses with fewer than 19 employees and therefore their capacity to respond effectively to such regulation needs to be taken into account.²

R&CA strongly cautions against any unnecessary administrative or regulatory burdens being placed on businesses within the foodservice sector, as part of the elements contained within this review. R&CA stresses that lower-risk industries such as the café, restaurant and catering sector should not be subject to unnecessary additional or regulatory requirements which go beyond their overall capacity to implement significant changes.

¹ Safe Work Australia (2017) *Key Work Health and Safety Statistics Australia 2017*.

² Australian Bureau of Statistics (ABS) 2017 8165.0 - *Counts of Australian Businesses, including Entries and Exits, Jun 2012 to Jun 2017*.

RESPONSE TO REVIEW QUESTIONS

Question 1: Views on the effectiveness of the three-tiered approach – model WHS Act supported by model WHS regulations and model WHS codes – to achieve the objects of the WHS laws.

R&CA is of the view that the three-tier approach is effective and enables a framework for WHS laws that is broadly applicable to most organisations and simplifies the regulatory process for the regulators. That said, we would argue that the regulations and Codes are wordy, complex and not always written in plain English which presents challenges for small businesses, particularly where English is a second language.

Question 2: Any comments on whether the WHS Regulations adequately support the object of the model WHS Act.

For small businesses the regulations are often complex and difficult to understand and apply within the constraints of their businesses. The owner/operator of a small business is often the point of contact and responsible person for a huge number of Federal, State and local regulations, ranging from tax, workplace laws, licensing, and food safety. It is important to take account of the burden of red tape responsibilities that lie with individuals running small businesses. As the Productivity Commission stated in a 2013 report, *“small businesses generally lack dedicated resources with the necessary skills and training to determine their regulatory obligations directly from legislation or from detailed written guidance”*³.

Question 4: Comments on whether the current framework strikes the right balance between the WHS Act, Regulations and Codes.

For small businesses the Codes are the most challenging and difficult to understand and apply within the constraints of their businesses. We understand that the Codes are designed as a tool but also as a compliance and regulatory instrument and can be used in the courts to demonstrate businesses' response to the standards of best practice. By its nature that means that the document must be written in a language that is not plain English and is challenging for many small business operators to navigate. Therefore, we are of the view that the Codes do not support the objects of the Act and are overly complex and difficult to interpret and apply into practical solutions.

³ Productivity Commission (2013) Regulator Engagement with Small Business, Research Report, Canberra.

Question 9: Comments on emerging and re-emerging WHS hazards or risks that are not effectively covered by the model WHS legislation.

At this stage, we are not aware of any additional WHS hazards or risks that are not already covered by the model WHS legislation.

Question 20: Are there any classes of workers for whom the current consultation requirements are not effective and if so how could consultation requirements for these workers be made more effective.

The nature of work continues to change. Hospitality has always operated with a larger than average casual and part-time labour force. According to the Department of Jobs and Small Business, 60 per cent of employees within the Accommodation and Food Services sector are employed on a part-time basis.⁴ The nature of work in hospitality is governed by the fact that consumers want to eat lunch at lunch-time and dinner at dinner-time leading to a lumpy trading cycle that is often best served with seasonal or casual labour. The challenges in WHS induction and oversight is amplified by the sector's casualised workforce that suffers from high staff turnover.

The workforce is also changing through the increased popularity of the gig economy. The increased incidences of businesses like Uber, Airbnb, Deliveroo, Pop-up events, mobile food vendors etc change the traditional employment model with many workers taking on the status of contractor. The transient nature of these businesses does not alter the duty of care owed to workers, yet the current regulations and Codes assume a longer-term engagement and relationship between worker and PCBU (Persons Conducting a Business or Undertaking).

For these workers the requirement to consult must be more flexible. A culture of safety within the business must foster a confidence that workers' concerns will be taken seriously. To prescribe a formal consultation process or the appointment of a HSR (Health and Safety rep) is impractical given the nature of work in these new industry sectors and the impact of transient and contractor workers.

This Review should attempt to consider the changing landscape of work and the challenges for small businesses to comply with the Codes of Practice in a contemporary business setting.

⁴ Department of Jobs and Small Business (2017) *Australian Jobs 2017*.

That may include consideration of a simplified induction process that facilitates and recognises industries with high churn and low risk.

Question 25: Comments on the effectiveness, sufficiency and appropriateness of the functions and powers of the regulator to ensure compliance with the model WHS laws.

As noted in the discussion paper, small businesses prefer a collaborative relationship with the regulator, including an incremental approach to achieving WHS compliance. Recent changes in SA where the regulator has split functions into educative and compliance has been successful in encouraging PCBUs to call for assistance without fear of triggering compliance activity.

We would endorse that model to foster that collaborative approach.

CONCLUSION

R&CA appreciates the opportunity to provide a submission to the *Review of the Model WHS Laws*. R&CA is committed to achieving positive outcomes within the foodservices sector to minimise the occurrence of workplace injury. R&CA continually provides its members with best-practice advice and assistance as part of its own efforts to minimise the occurrences of workplace injury and supports a future with a national approach towards this issue. R&CA is cognisant of the critical importance of safety at work in supporting its own mission statement of promoting the overall value of the dining experience to the public. Without well trained and healthy staff the dining experience is compromised, given the labour-reliant nature of the sector.

As R&CA has already expressed within this submission, the imposition of additional administrative and regulatory requirements on businesses within the small business foodservice sector should not be pursued as part of this review. Rather, R&CA believes that a simplified set of Codes of Practice would assist small businesses to understand their obligations and take up safe work practices as a matter of course.

Our experience tells us that when compliance is arduous and complex, despite being a legal obligation, small business operators will find compliance too high a hurdle to overcome. An incremental approach, where small simple steps to a safe work place are clearly articulated, would improve the work health and safety outcomes for all workers and the community at large.

REFERENCES

Australian Bureau of Statistics (ABS) 2017 8165.0 - *Counts of Australian Businesses, including Entries and Exits, Jun 2012 to Jun 2017*.

Department of Jobs and Small Business (2017) *Australian Jobs 2017*.

Productivity Commission (2013) *Regulator Engagement with Small Business*, Research Report, Canberra.

Safe Work Australia (2017) *Key Work Health and Safety Statistics Australia 2017*.

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